IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5540 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO

2. To be referred to the Reporter or not? YES.

3. Whether Their Lordships wish to see the fair copy of the judgement? NO.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? NO.

NASIRKHAN RASIDKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MS SIDDHI TALATI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision:23/12/98

C.A.V.JUDGMENT :-

1. In this writ petition under Article 226 of the

Constitution of India, the prayer is that a writ of habeas corpus may be issued ordering the release of the petitioner. There is another prayer in the nature of certiorari for setting aside the detention order passed by the detaining authority against the petitioner on 6-11-96.

2. The brief facts are that the Commissioner of Police, Ahmedabad City, on 6-11-96 passed an order of detention, Annexure "A" against the petitioner under Section 3 (2) of Prevention of Anti-social Activities Act, 1985 (for short " PASA Act "). The grounds of detention are contained in Annexure "C". The grounds were furnished to the petitioner. From these grounds it appears that in view of six cases registered under Section 379 and 114 of the Indian Penal Code, against the petitioner in addition to statements of two witnesses, the detaining authority came to subjective satisfaction that the petitioner is a "dangerous person" within the meaning of Section 2 (c) of PASA Act and his activities were prejudicial to maintenance of public order, consequently the impugned order was passed.

3. This order has been challenged by learned counsel for the petitioner on 3 grounds :

The first ground is that the grounds of detention are vague. This attack cannot be accepted. The grounds of detention contained in Annexure "C" are specific. All the requisite details of the cases registered against the petitioner had been given. So, also the extract of the statements of confidential witnesses. The names and addresses of these witnesses were not disclosed because they had reasonable fear and apprehension from the petitioner. Thus, privilege under Section 9 (2) of the PASA Act was rightly claimed by the detaining authority. The grounds, therefore, do not suffer from vagueness and this attack is unsustainable.

4. The next contention has been that the names of the associates of the petitioner as mentioned in the grounds of detention have not been disclosed and this has prejudiced the rights of the petitioner to furnish effective representation in his defence. It was contended that in this way a valuable fundamental right under Article 22 (5) of the Constitution of India has been violated. The case of Gopal Bauri vs. District Magistrate, Burdwan and others, A.I.R. 1975, SC, 781 was referred. To my mind, this case is distinguishable on facts. In this case, the omission was that the name of the petitioner's associate from whom the stolen articles were recovered was not given. It was a definite fact

known to the authority from whom the stolen articles were recovered, still the name of that person was not disclosed by the detaining authority. It was on this fact the Apex Court held that where recovery of stolen articles from one of detenu's associate weighing with the detaining authority in making the detention order, the omission to disclose name of associate of the detenu in the grounds of detention renders the order of detention invalid. In the case before me, there is no material on record that the names of the associates of the detenu were either in the knowledge of the detaining authority or in the knowledge of two confidential witnesses upon whose statements, the detaining authority placed reliance. So far as registered cases are concerned, copies of the F.I.R. etc. were furnished to the petitioner and from that F.I.R. he could have known the names of his associates. Thus, it is not a case where two confidential witnesses knew the names of associates of the petitioner nor the detaining authority was apprised of the names of the associates of the petitioner who committed offence against the two confidential witnesses. In these circumstances, non-disclosure of names of the associates of the petitioner cannot be said to have rendered the impugned order invalid.

5. Last contention has been that it is not a case where prejudicial activities of the petitioner created situation which had disturbed or was likely to disturb public order. From the grounds of detention it appears that the petitioner was considered to be "dangerous person" within the meaning of Section 2 (c) of the PASA Act. This subjective satisfaction of the detaining authority requires no interference. A person is said to be "dangerous person" within the meaning of Section 2 (c) of the PASA Act who is habitual in committing the offence punishable under Chapter XVI or XVII of the Indian Penal Code and under Chapter V of the Arms Act. Repetition of activity and commission of offences under Section 379 and 114 of the Indian Penal Code six times by the petitioner, was sufficient to treat him a "dangerous person" within the meaning of Section 2 (c) of the PASA Act. All these offences were committed in the year 1996. Thus, it was repeated commission of these offences during one year by the petitioner and as such he was rightly considered to be a "dangerous person".

6. A person who isconsidered to be a "dangerous person" cannot be preventively detained unless his activities are prejudicial to maintenance of public order. Learned counsel for the petitioner tried to distinguish the concept of public order and law and order

with great emphasis and cited number of decisions of the Apex Court on the point. It is not necessary to discuss in detail those decisions of the Apex Court on the point. It is by now almost settled that there is remarkable distinction between the situation creating law and order and situation disturbing public order.

7. In case of Harpreet Kaur vs. State of Maharashtra, A.I.R. 1992 SC 979, the distinction between public order and maintenance of law and order was drawn. It was observed by the Apex Court that the objectionable activities of a detenu have to be taken in the totality of the circumstances to find out whether those activities have any prejudicial effect on the society as a whole or not. If the society and not only an individual suffers on account of questionable activities of a person, then those activities are prejudicial to the maintenance of public order and are not merely prejudicial to the maintenance of law and order. This distinction was followed in Lallan Prasad Chunilal Yadav v. Shri S. Ramamurthi & others J.T. 1992 (4) S.C. 128. The case of Shri Omprakash v. Commissioner of Police and others, A.I.R. 1990 S.C. 496 can also be referred. In case of Gulab Mehra v. State of U.P. and others,A.I.R. 1987 S.C. 2332, the Apex Court observed that an act whether amounts to a breach of law and order or a breach of public order solely depends on its extent and reach to the society. If the act is restricted to particular individuals or a group of individuals, it reaches law and order problem, but if the effect and reach and potentiality of the act is so deep as to affect the community at large and/or the even tempo of the community then it becomes breach of public order. In this very case, it was further observed that if the situation is so tense namely communal tension is very high , even an indiscreet act of no significance is likely to disturb or dislocate the even tempo of life of the community.

8. This and other cases cited by the learned counsel for the petitioner which require no detailed reference indicate that an activity which is likely or has tendency to disturb the even tempo of the life of the community can be called as an activity prejudicial for maintenance of public order. If instances are stray against one or two individuals where public at large are not affected by such activities, such activities cannot be called as prejudicial for maintenance of public order. It is not the activity in its nature which is relevant and material, but its potentiality and effect on the society at large which can guide in coming to conclusion whether a particular activity is prejudicial for maintenance of

public order or not. If the activities are such that peace and tranquillity of the public in a particular area or locality is disturbed, then also such activity may be considered prejudicial to maintenance of public order. But every incident or activity in which a sense of fear and terror is created or there is obstruction to the routine flow of traffic, it cannot be said that such activities are prejudicial for maintenance of public order.

9. In view of this, with a view to see whether the activities of the petitioner are prejudicial for maintenance of public order, the activities of the petitioner can be divided in two parts. The first part of the activities is disclosed in the grounds of detention with reference to 6 cases registered against him. Of course, in these cases, the case of theft of motor vehicles namely Maruti Van, Tata Sumo Car and Maruty Fronty was alleged against the petitioner. The petitioner was booked for these offences under the relevant sections of the Indian Penal Code. It is not disclosed in the grounds of detention that theft of these motor vehicles was committed by the petitioner in such a manner that either he was caught red-handed or some witnesses had seen him committing theft. Likewise, there is no indication in the grounds of detention that the petitioner committed theft of these motor vehicles in such high handed manner that public order was actually disturbed in the four areas from where the theft of motor vehicles was reported. Thus, these crime cases cannot be considered to be activities creating disturbance in public order.

10. So is the case with two statements of two witnesses whose names have been kept secret by the detaining authority. If these two instances narrated by the witness are carefully examined, it can be said that the subjective satisfaction of the detaining authority that the activities of the petitioner were prejudicial to maintenance of public order cannot be sustained.

11. The first incident took place on 10-10-96 at about 1-00 p.m. The witness was passing through the road. The petitioner was present along with his companions. He stopped the witness on the point of knife and asked him to give up whatever he had with him. The witness gave Rs.775/-. Inspite of this, the petitioner had slapped the witness and beat him with kicks and fists. The witness raised alarm, whereupon persons from nearby assembled. Thereafter, the petitioner snatched the golden chain from the neck of the witness and he went

towards persons, who assembled at the spot on the alarm of the witness to beat them. Due to this feeling of atmosphere of fear was created and regular life and transaction was got disturbed. Here the victim was the witness. No injury was caused to any person who collected at the spot on the alarm of the witness. If such scuffle took place and people collected at the spot and they run here and there after the petitioner went towards them with an intention to beat them, some disturbances were likely to be created and in that commotion regular life was likely to be disturbed for a short time, but such activity cannot be considered to have disturbed public order in the area.

12. Similar is the case with the incident narrated by the other witness. It was incident of 28-9-96. On that day, at about 4-30 p.m. the witness was present at the place of his business. The petitioner along with his companions was there, he demanded Rs.300/- and on refusal of the witness, the petitioner got excited, dragged the witness from his business place with the help of his companions, took him to public road and he started beating him. On the alarm of the witness, persons of nearby locality collected and pedestrians also assembled. The petitioner took Rs.200/- from the pocket of the witness and tried to attack the persons who collected at the spot. Those people started running here and there, due to which atmosphere of fear prevailed at the said place. If this incident is analysed in the light of the aforesaid observations of the Apex Court, it cannot be said that situation prejudicial to maintenance of public order was created.

13. Learned A.P.P. however placing reliance upon the Apex Court verdict in case of Harpreet Kaur v State of Maharashtra (Supra) argued that in this case the situation was just like situation in Harpreet Kaur's case. She argued that the activities of the petitioner with the two witnesses and the persons who collected at the spot cannot be said to confined to two individuals only and since the witnesses and members of public were also threatened, it means situation prejudicial for maintenance of public order was created. For the reasons stated above, I am unable to accept this contention for the obvious reason that these two incidents were not such in which even tempo of the life of the locality or the life of the community was disturbed. The peace and tranquility of the area also cannot be said to have been disturbed. It cannot be said to be a solitary incident because the incident was repeated twice with two different witnesses. But on that ground alone it cannot

be said that situation prejudicial for maintenance of public order was created.

14. In view of the aforesaid discussion, I am of the view that though the petitioner was rightly considered to be a "dangerous person" within the meaning of Section 2 (c) of the PASA Act, his activities mentioned in the grounds of detention were not prejudicial for maintenance of public order nor could be prejudicial for maintenance of public order and as such preventive detention was hardly justified. As a result, the impugned order cannot be sustained. The petition therefore succeeds and is hereby allowed. The impugned order of detention, Annexure "A", dated 6-11-98 is hereby quashed. The petitioner shall be released forthwith unless he is wanted in some other case.

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mithabhai